

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES MCRAE,

Petitioner,

v.

ADA PEREZ,

Respondent.
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MEMORANDUM OPINION
AND ORDER

11 CV 5715 (VB)

Briccetti, J.:

Before the Court is Magistrate Judge Lisa Margaret Smith’s Report and Recommendation (“R&R”), dated September 16, 2015, on petitioner James McRae’s petition for a writ of habeas corpus under 28 U.S.C. § 2254. (Doc. #40).

Petitioner was convicted in Orange County Court of robbery in the first degree, robbery in the second degree, criminal possession of a weapon in the fourth degree, and menacing in the second degree, all arising from the knifepoint robbery of Kenneth Van Orden.¹ That conviction is challenged here on two grounds: (i) legal insufficiency of the evidence corroborating accomplice testimony, and (ii) denial of the right to counsel. Judge Smith recommended that the Court dismiss the petition. Familiarity with the factual and procedural background of this case is presumed.

For the following reasons, the Court adopts the R&R as the opinion of the Court and dismisses the petition.

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate

¹ Petitioner was originally convicted of two counts of first degree robbery. However, on direct appeal, the Appellate Division, Second Department, vacated petitioner’s conviction on one of those counts and ordered a new trial thereon. The People later consented to dismissal of that count.

judge.” 28 U.S.C. § 636(b)(1). Parties may raise objections to the report and recommendation, but the objections must be “specific[,] written,” and submitted within 14 days after being served with a copy of the recommended disposition. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1).

When a party submits a timely objection to a report and recommendation, the district court reviews the parts of the report and recommendation to which the party objected under a de novo standard of review. 28 U.S.C. § 636(b)(1)(C); see also Fed. R. Civ. P. 72(b)(3). The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record. Lewis v. Zon, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Petitioner did not object to the R&R.²

The Court has carefully reviewed Judge Smith’s thorough and well-reasoned R&R, as well as the petition and the materials submitted in support and in opposition thereto, and finds no error, clear or otherwise.

CONCLUSION

Accordingly, the Court adopts the R&R in its entirety. The petition for a writ of habeas corpus is DISMISSED. The Clerk is instructed to enter judgment accordingly and close this case.

² Petitioner had until October 5, 2015, to file objections to the R&R. (R&R, at 27). Petitioner neither filed objections nor sought an extension of time to do so.

As petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c)(2); Love v. McCray, 413 F.3d 192, 195 (2d Cir. 2005).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Dated: December 15, 2015
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge